

Remarks

Claims 1-46 are pending. Claims 1, 7 and 11 are amended. Claims 3-5 and 12-46 are indicated to be withdrawn as being drawn to a non-elected invention. The present application has been amended to conform to the restriction requirement of December 18, 2002 and to render the amended claim 1, claim 2 and claims 6-11 allowable. Particularly, claim 1 is amended to recite sequences as supplied in the claims as filed. The amendments to claim 11 are supported by original claim 1 as well as the specification (see especially page 31, lines 5-6 and page 30, lines 26-30; page 31, lines 1-6). The claims have been amended whereby the claimed method falls within the scope of elected Group I and those oligonucleotides in the specification that are drawn to the same method as those primers contained in elected Group I. Further, the oligonucleotides of the claims contained within this amendment are not anticipated by any reference cited by the Examiner or otherwise. The oligonucleotides or the oligonucleotide pairs claimed are novel. These oligonucleotides or oligonucleotide pairs are an improvement over the art cited by the Examiner. No new matter has been added by way of this amendment.

I. Objection to the specification

The Office Action states that the specification is objected to for failing to adhere to the requirements of the sequence rules. Applicants have amended the specification by appending SEQ ID Numbers to all mentions of specific amino acid or nucleotide sequences comprising four or more amino acids and ten or more nucleotides. Counsel for applicants provide herein a revised Sequence Listing in the form of substitute paper

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sheets and a computer readable diskette to comply with 37 C.F.R. § 1.821 - 1.825. SEQ ID NO:87, SEQ ID NO:88 and SEQ ID NO:89 are added to the revised sequence listing. Support for these sequences can be found in the specification as originally filed (see page 35, lines 17, 21-24, 26 and 28 and page 36, line 6). The specification is amended to include the appropriate sequence identifiers at these pages. The material on the diskette and that in the paper copy of the Sequence Listing are the same and contain no new matter. Entry of the revised Sequence Listing is respectfully requested. Applicants respectfully submit that the sequence rules objection should be withdrawn.

II. Rejections Under 35 U.S.C. §102(a)

The Office Action states that claims 1, 2, 6 and 9-11 are rejected under 35 U.S.C. 102(a) as being anticipated by Kilpatrick (WO 98/14611).

Applicants respectfully assert that the claims as amended overcome this rejection. To anticipate, every element of the allegedly anticipated claims must be found in a single piece of prior art. Lewmar Marine, Inc. v. Barient, Inc., 3 U.S.P.Q.2D (BNA) 1766, 1767 (Fed. Cir. 1987). Claim 1 has been amended to reflect unique oligonucleotides not disclosed by Kilpatrick (WO 98/14611) or any other source. This amendment to claim 1 also renders dependent claims 2 and 6-11 allowable. For these reasons, Applicants respectfully submit that Kilpatrick does not anticipate, and that the rejection under 35 U.S.C. §102(a) should be withdrawn.

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III. Rejections Under 35 U.S.C. §102(b)

The Office Action states that claims 1, 2 and 9-11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated. In support of this rejection, the Examiner cites Kilpatrick et al. 1996 and Kilpatrick et al. 1998 both published in the Journal of Clinical Microbiology.

Applicants respectfully assert that the claims as amended overcome this rejection. The cited publications do not anticipate amended claim 1. Amended claim 1 recites sequences that are not found in either publication. Therefore, the publications cited by the Examiner do not contain all limitations found in the present claims. The amendments to claim 1 also render dependent claims 2 and 9-11 allowable. For these reasons, Applicants respectfully submit that the publications by Kilpatrick et al. do not anticipate, and that the rejection under 35 U.S.C. §102(b) should be withdrawn.

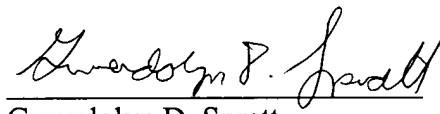
In view of the above amendments and remarks, reconsideration and allowance of the pending claims is believed to be warranted, and such action is respectfully requested. The Examiner is invited and encouraged to directly contact the undersigned if such contact may enhance the efficient prosecution of this application to issuance.

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No fee is believed due; however, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 14-0629.

Respectfully submitted,

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CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence, including any items indicated as attached or included, is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date indicated below.


Gwendolyn D. Spratt
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9-29-03
Date

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